

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. _____
)
) NOTICE OF **PRELIMINARY**
) HEARING ON MOTION
) FOR USE OF CASH COLLATERAL
) TO OBTAIN CREDIT
Debtor(s)) (Check One)

YOU ARE NOTIFIED THAT:

1. The undersigned moving party, _____, filed a Motion For Use of Cash Collateral To Obtain Credit (*check one*). A copy of the motion is attached; and it includes BOTH (i) the statement required by [Local Form #541.7](#), and (ii) the following allegations:

a. The immediate and irreparable harm that will come to the estate pending a final hearing is _____.

b. The amount of cash collateral credit (*check one*) necessary to avoid the harm detailed above prior to the final hearing is _____.

2. The name and service address of the moving party's attorney (or moving party, if no attorney) are: _____.

3. A **PRELIMINARY** HEARING on the motion WILL BE HELD ON _____ AT _____
IN _____.

Testimony will be received if offered and admissible.

4. If you WISH TO OBJECT to the motion, YOU MUST DO ONE OR BOTH OF THE FOLLOWING: (1) ATTEND the preliminary hearing; AND/OR (2) FILE with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with "3" or "4", mail to 1001 SW 5th Ave. #700, Portland OR 97204; OR if it begins with "6" or "7", mail to 405 E 8th Ave #2600, Eugene OR 97401), BOTH: (a) a written response, which states the facts upon which you will rely, AND (b) a certificate showing a COPY of the response was given DIRECTLY TO the Judge, and served on the U.S. Trustee and the party named in pt. 2 above. See [Local Form #541.51](#) for details.

5. On _____ copies of BOTH this notice AND the motion were served pursuant to FRBP 7004 on the debtor(s); any debtor's attorney; any trustee; any trustee's attorney; members of any committee elected pursuant to 11 U.S.C. §705; any Creditors' Committee Chairperson [or, if none serving, on all creditors listed on the list filed pursuant to FRBP 1007(d)]; any Creditors' Committee attorney; the U.S. Trustee; and all affected lien holders whose names and addresses used for service are as follows:

Signature

(If debtor is movant) Debtor's Address & Taxpayer ID#(s) (last 4 digits)

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Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re)	
)	Case No. 11-62723-fra11
Olsen Agricultural Enterprises LLC,)	
an Oregon limited liability company,)	Chapter 11
)	
Debtor.)	DEBTOR'S MOTION FOR
)	AUTHORIZATION TO OBTAIN
)	SECURED CREDIT ON INTERIM AND
)	FINAL BASIS
)	
)	EXPEDITED HEARING REQUESTED
)	

Olsen Agricultural Enterprises LLC (the "Debtor"), as debtor in possession, hereby moves this Court for entry of interim and final orders authorizing it to obtain secured credit for the purposes and on the terms set forth herein.

Concise Statement Pursuant to Bankruptcy Rule 4001(c)(1)(B)

The Debtor seeks authorization to borrow \$3,000,000 from Bacchus Capital, L.P. (the "DIP Lender") subject to and in accordance with the terms and conditions set forth in the debtor in possession credit agreement (the "DIP Loan Agreement" and, together with the other documents entered into in connection therewith, the "DIP Loan Documents") to be entered into by the Debtor and the DIP Lender pursuant to the term sheet attached hereto as Exhibit A (the "Term Sheet"). By this motion, the Debtor seeks entry of (i) an interim order in the form

1 attached hereto as Exhibit B (the "Interim Order") (A) authorizing it to borrow on an interim
 2 basis the amount of \$500,000, which is the estimated amount necessary to avoid immediate and
 3 irreparable harm to the estate for the period June 13, 2011, to July 10, 2011, and (B) scheduling a
 4 final hearing on this motion, and (ii) a final order (the "Final Order") authorizing it to borrow on
 5 a final basis the aggregate principal amount of \$3,000,000 in accordance with the terms and
 6 conditions set forth in the DIP Loan Documents. In connection with the postpetition financing to
 7 be made available to the Debtor under the DIP Loan Agreement (the "DIP Facility"), the Debtor
 8 requests authority to do the following:

9 (1) Subject to the terms and limitations set forth in the DIP Loan Agreement, Interim
 10 Order and Final Order, to grant to the DIP Lender superpriority administrative expense status
 11 pursuant to section 364(c)(1) of the Bankruptcy Code with respect to any and all obligations of
 12 the Debtor under the DIP Loan Agreement, the Interim Order, and the Final Order (collectively,
 13 the "DIP Loan Obligations"), with priority over any and all other costs and expenses of the
 14 Debtor's estate of the kinds specified in or ordered pursuant to sections 503(b), 507(b), or any
 15 other provision of the Bankruptcy Code, subject to the Carve-Out (as described in the Interim
 16 Order);

17 (2) Subject to the terms and limitations set forth in the DIP Loan Agreement, Interim
 18 Order and Final Order, to grant to the DIP Lender (a) pursuant to section 364(d)(1) of the
 19 Bankruptcy Code, perfected, first-priority, senior liens on all property of the estate (tangible and
 20 intangible, real, personal or mixed), whenever acquired or arising, other than claims and causes
 21 of action of the estate arising under Chapter 5 of the Bankruptcy Code (collectively, the
 22 "Collateral"), with such liens to prime and be senior in priority to all existing security interests in
 23 and liens on property of the estate other than (A) statutory liens that secure claims of
 24 governmental units for ad valorem property taxes or similar impositions, and (B) validly
 25 perfected purchase money security interests in equipment extant as of the Petition Date (as
 26 defined below) (each a "Non-Primed Lien" and collectively the "Non-Primed Liens"), (b)

1 pursuant to section 364(c)(2) of the Bankruptcy Code, perfected, first-priority liens on
2 unencumbered property of the Debtor, if any, and (c) pursuant to section 364(c)(3) of the
3 Bankruptcy Code, perfected, junior liens on that portion of the Collateral subject to Non-Primed
4 Liens;

5 (3) To grant adequate protection to those creditors whose interests will be affected by
6 the proposed DIP Loan (as identified in paragraph 5 of the motion below and collectively
7 referred to herein as the “Existing Secured Creditors” and the liens of the Existing Secured
8 Creditors referred to as the “Existing Liens”), consisting of (a) administrative expense claims
9 under section 503(b) of the Bankruptcy Code that will have superpriority as provided in section
10 507(b) of the Bankruptcy Code, and (b) perfected liens (the “Adequate Protection Liens”) on all
11 property of the estate (tangible and intangible, real, personal or mixed), whenever acquired or
12 arising, other than claims and causes of action of the estate arising under Chapter 5 of the
13 Bankruptcy Code, to the extent necessary to protect the Existing Secured Creditors against any
14 diminution in the value of their interests in the Debtor’s prepetition property resulting from the
15 grant of the “priming” lien to the DIP Lender, provided that such superpriority administrative
16 expense claims and Adequate Protection Liens will be junior to the superpriority claims and liens
17 granted to the DIP Lender and subject to the Replacement Liens granted to such creditors as
18 adequate protection for the Debtor’s use of cash collateral under the Interim Order Authorizing
19 Debtor to Use Cash Collateral and Scheduling a Final Hearing entered herein on June 3, 2011, as
20 Document # 23 (the “Interim Cash Collateral Order”) and under any subsequent cash collateral
21 orders; and

22 (4) To modify the automatic stay under section 362 of the Bankruptcy Code to the
23 extent necessary to implement the transactions contemplated by the DIP Loan Documents,
24 including exercise of the remedies set forth therein.

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Disclosures Pursuant to Bankruptcy Rule 4001(c)(1)(B) and Court's Guidelines

In accordance with Bankruptcy Rule 4001(c)(1)(B) and the Court's Guidelines Regarding Motions to Obtain Credit set forth in LBF 541.7, the following is a summary of the types of provisions described in those rules that will be included in the DIP Loan Agreement, the Interim Order and the Final Order:

(i) Provisions Re Priming Liens Without the Consent of Lienholders. The DIP Loan will be secured by priming liens on the Collateral to which the Existing Secured Creditors have not consented pursuant to section 364(d)(1) of the Bankruptcy Code. However, the Interim Order and Final Order will provide for adequate protection of the interests of the Existing Secured Creditors in the Collateral.

(ii) Superpriority Claim and Non-Priming Liens Re: DIP Loan Obligations. As security for the DIP Loan Obligations, and subject to the Carve-Out, the DIP Lender will receive (x) a superpriority claim under section 364(c)(1) of the Bankruptcy Code, (y) a lien on unencumbered property included in the Collateral under section 364(c)(2) of the Bankruptcy Code, and (z) a junior lien on that portion of the Collateral subject to Non-Primed Liens.

(iii) Superpriority Claims and Replacement Liens as Adequate Protection of Existing Liens. As adequate protection for the Existing Liens, the Existing Secured Creditors will receive (x) superpriority claims as provided in section 507(b) of the Bankruptcy Code, and (y) Adequate Protection Liens on the Collateral, to the same extent, validity, enforceability and relative priorities as their prepetition liens; provided, however, that such superpriority claims and Adequate Protection Liens will be junior to the superpriority claims and liens granted to the DIP Lender to secure the DIP Loan Obligations.

(iv) Remedies and Relief from Stay. Upon the occurrence of an Event of Default under and as defined in the DIP Loan Agreement, (x) the automatic stay will be deemed vacated and modified to the extent necessary to permit the DIP Lender to immediately (A) deliver a notice of an Event of Default, and (B) terminate or suspend any outstanding advance, and (y) after five (5)

business days' written notice (within which period the Debtor may only dispute the DIP Lender's declaration of an Event of Default in the Bankruptcy Court on an expedited basis), the automatic stay of section 362 of the Bankruptcy Code will terminate, without further order of the Court and without the need for filing any motion for relief from the automatic stay or any other pleading, for the limited purpose of permitting the DIP Lender to do any one or more of the following: (A) charge the default rate of interest on the DIP Loan; and (B) declare the principal of and accrued interest, fees and expenses constituting the DIP Loan Obligations to be due and payable. Upon and after the occurrence of an Event of Default, except as provided in the preceding sentence, the DIP Lender will be required to file a motion seeking relief from the automatic stay (a "Stay Motion") to enforce any of its other rights or remedies. The Stay Motion will be heard on no more than five (5) days' notice and the only issue to be adjudicated on the Stay Motion will be whether an Event of Default occurred under the DIP Loan Documents. The Debtor will waive any right to enjoin the exercise of the rights and remedies by the DIP Lender following an Event of Default.

(v) Deadlines for Filing an Acceptable Plan. The affirmative covenants in the DIP Loan Agreement will require the Debtor to use its best efforts to file a plan on terms acceptable to the DIP Lender in its sole and absolute discretion (an "Acceptable Plan") within 90 days of the Petition Date, but in no event will an Acceptable Plan be filed later than 120 days after the Petition Date.

(vi) Indemnification and Limitations on Liability. The DIP Loan Agreement will require the Debtor to indemnify and hold harmless the DIP Lender and its agents and will provide limitations on their liability (including a waiver of consequential damages) in connection with the DIP Facility and related matters, subject to limitations for gross negligence and willful misconduct.

(vii) Breakup Fee. The Debtor will agree to pay the DIP Lender a break-up fee of \$125,000 upon the occurrence of any of the events described in the Break-Up Fee provision in

1 the Term Sheet. The Debtor submits that by virtue of the DIP Lender's commitments and
 2 efforts, it has made a substantial contribution to the Debtor's estate within the meaning of section
 3 503(b)(3) of the Bankruptcy Code.

4 **(viii) Use of DIP Proceeds/Approved Budget.** Proceeds from advances under the DIP
 5 Facility will be used in accordance with the budget attached to the Interim Cash Collateral Order
 6 (the "Interim Budget"), as it may be revised from time to time with the DIP Lender's approval,
 7 which approval will not be unreasonably withheld. Court approval of revisions to the Interim
 8 Budget will not be required. The Debtor will be permitted variances, on a line-item basis, up to
 9 10 percent of the total budgeted expenses (exclusive of legal or professional fees and expenses)
 10 through the end of the applicable period, and will be permitted to carry forward from a prior
 11 four-week period to the next two succeeding four-week periods any unused portion of the
 12 aggregated actual amounts attributable to the prior four-week period.

13 **(ix) DIP Loan Fees.** The DIP Lender will be entitled to (x) a commitment fee equal to
 14 4.0 percent of the maximum principal amount of the DIP Loan, and (y) an exit fee equal to 2.0
 15 percent of the maximum principal amount of the DIP Loan, which will be due and payable upon
 16 the Maturity Date.

17 **(x) Payment of IRS' Secured Claims.** Subject to the entry of a Final Order, the Debtor
 18 will be authorized to pay the IRS' prepetition secured claims, in each case to the extent the
 19 statutory lien securing such claim has priority over the security interests that secure the claims of
 20 Rabo Agrifinance, Inc.

21 Jurisdiction

22 This Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and 1334 and LR
 23 2100.1. Consideration of this motion constitutes a core proceeding within the meaning of 28
 24 USC § 157(b)(2)(D). The statutory predicates for the relief sought by this motion are sections
 25 105, 361 and 364 of the Bankruptcy Code. Venue is proper under 28 USC § 1408.

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Statement of Facts

A. General Background and the Debtor's Business

1. On June 1, 2011 (the "Petition Date"), the Debtor filed herein a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtor is continuing in the management and possession of its business and properties as debtor in possession under sections 1107 and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner has been requested or appointed in this case, and the United States trustee has not appointed an official committee of creditors.

2. The Debtor operates an agricultural enterprise on approximately 7,762 acres of owned and leased land located in Benton, Linn and Polk Counties. Its business is comprised principally of three divisions: (a) Olsen Seed Company, which produces and sells a variety of grass seed and grains on approximately 5,934 acres; (b) Olsen Agriculture, which grows and sells peppermint, nursery stock, squash, hazelnuts and blueberries on approximately 1,334 acres; and (c) Olsen Family Vineyards, which grows a variety of grapes on approximately 494 acres and produces and sells quality wines under the "Viridian" label as well as private labels. As of the date hereof, the Debtor has 45 employees, including management personnel.

3. The Debtor is the surviving entity of a merger transaction that was consummated on June 1, 2011. In the merger transaction, Olsen Agricultural Company, Inc., an Oregon corporation ("OAC"), Jenks-Olsen Land Co., an Oregon general partnership ("JOLC"), Olsen Vineyard Company, LLC, an Oregon limited liability company ("OVC"), and The Olsen Farms Family Limited Partnership ("OFFLP") were merged with and into the Debtor. OAC, JOLC, OVC and OFFLP were co-borrowers under the term loan made by AXA Equitable Life Insurance Company, and OAC, JOLC and OVC were co-borrowers under the line of credit loans made by Rabo Agrifinance, Inc. In connection with the merger transaction, other related parties that pledged real estate collateral to support the line of credit loans agreed to contribute such property to the Debtor in exchange for the right to receive ownership interests in the Debtor.

4. For the fiscal year ended December 31, 2010, OAC reported total revenues of \$6,428,880 and a net loss of (\$5,791,310). At the time of the merger, on a consolidated basis, the books and records of OAC, JOLC and OVC reflected assets totaling approximately \$29.8 million and liabilities totaling approximately \$37.2 million. The fair market value of the Debtor's assets is significantly greater than their book values, particularly in the case of fixed assets. The fair market value of the Debtor's assets, on a going concern basis, is approximately \$50 million.

5. The following creditors have or may claim to have a security interest in or lien on property of the estate that will be affected by the "priming" lien to be granted to the DIP Lender:

(a) Rabo Agrifinance, Inc. ("Rabo"), which has a blanket security interest in and trust deed liens on essentially all of the Debtor's assets, pursuant to a series of deeds of trusts and a security agreement dated February 19, 2008, to secure (i) a term loan in the approximate amount of \$14,240,000, and (ii) line of credit loans in the approximate amount of \$15,580,000;

(b) BFS International, LLC ("BFS"), which has a security interest in the Debtor's accounts and payment intangibles, pursuant to an assignment and security agreement dated January 19, 2009, to secure a claim of \$21,134.58 or less;

(c) United States of America, acting by and through the Internal Revenue Service (the "IRS"), which has a statutory lien on all of the Debtor's personal property, pursuant to federal tax lien notices filed with the Oregon Secretary of State on January 8, 2010 and on January 14, 2011, to secure 941 tax claims in the total approximate amount of \$122,000;

(d) Ledeboer Seed, LLC ("Ledeboer"), which has a security interest in certain of the Debtor's grass seed and in all accounts and general intangibles that arose out of a sale or other disposition of such grass seed, pursuant to a security agreement dated January 20, 2011, to secure a claim of \$20,000; and

(e) Callisons Inc. d/b/a I.P. Callisons and Sons ("Callisons"), which has (i) a security interest in the Debtor's 2011 peppermint crops, pursuant to a crop production loan and

1 security agreement dated February __, 2011, to secure a claim of \$425,432, and (ii) a statutory
2 agricultural services lien on the Debtor's 2011 peppermint crops, pursuant to an ASL-1 lien
3 notice filed with the Oregon Secretary of State on May 19, 2011, to secure a claim of
4 \$308,559.43 (which is included in the claim described in clause (i) above).

5 6. Under this Court's Interim Cash Collateral Order, the Debtor is authorized to use
6 cash collateral on an interim basis pending the final hearing scheduled for June 13, 2011.

7 B. The Debtor's Need for Cash and DIP Financing

8 7. As reflected in the Interim Budget, the Debtor anticipates that from the Petition
9 Date through December 31, 2011, it will be required to spend, on a cumulative basis,
10 approximately \$6.2 million for its operational needs (approximately \$3.5 million) and for
11 restructuring costs and other non-operating items (approximately \$2.7 million). Over that
12 period, the Debtor projects that it will generate approximately \$4.3 million in cash from its
13 operations. Without additional funding, the Debtor will have a negative cash position during the
14 week of June 13, 2011, and for subsequent periods.

15 8. The Debtor requires approximately \$500,000 under the DIP Facility from June
16 13, 2011 through July 10, 2011, for, among other things, continuing the operation of its business
17 in an orderly manner, paying payroll and other postpetition operating expenses, and satisfying
18 other working capital and operational needs. Absent authority to obtain the needed financing,
19 the Debtor will have to curtail or terminate its business operations, which will result in
20 significant loss in value to the estate and irreparable harm to all parties in interest.

21 C. The Absence of Feasible Alternatives to the DIP Financing

22 9. The Debtor is unable to obtain the needed financing from any source other than
23 the DIP Lender on the terms set forth in the Term Sheet either on an unsecured basis under
24 section 364(b) or 364(c)(1) of the Bankruptcy Code or on a secured basis under section 364(c)(3)
25 of the Bankruptcy Code. Despite the Debtor's diligent efforts to obtain the needed postpetition
26 financing, only the DIP Lender has indicated an ability and willingness to provide it to the

Debtor.

D. The DIP Financing Was Negotiated in Good Faith and at Arms' Length

10. The Term Sheet was negotiated at arms' length, following extensive negotiations. As a result of these negotiations, the Term Sheet reflects give-and-take on both sides. For instance, while the use of the DIP Loan proceeds is subject to budgetary constraints, the budget is subject to significant variance and carryforward provisions. Likewise, although the DIP Loan proceeds will be secured by liens on all property of the estate, none of the liens to be granted under the DIP Facility will encumber any avoidance actions.

Points and Authorities

A. The Debtor Cannot Obtain Financing on More Favorable Terms

11. Section 364 of the Bankruptcy Codes states that a debtor in possession that is authorized to operate its business may obtain financing either in the ordinary course of business or outside the ordinary course of business. Section 364(a) allows a debtor in possession to obtain unsecured credit and to incur unsecured debt in the ordinary course of business without court authorization. Under section 364(b), the court may authorize a debtor in possession to obtain unsecured credit and to incur unsecured debt outside the ordinary course of business. This type of financing is allowable as an administrative expense under section 503(b)(1). 11 USC § 364(b).

12. If a debtor in possession is unable to obtain unsecured credit on this basis, section 364(c) permits the court to authorize the debtor in possession to obtain credit or to incur debt that has priority over "ordinary" administrative expenses and, in particular, "(1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien." 11 USC § 364(c)(1)-(3).

13. Other than the requirement of notice and a hearing, the only statutory prerequisite under section 364(c) for obtaining credit on a secured basis and superpriority basis is that the

debtor in possession must be unable to obtain credit allowable as an "ordinary" administrative expense. 11 USC § 364(c)(2); see also In re Garland Corp., 6 BR 456, 461 n.11 (BAP 1st Cir 1980) (secured credit under section 364(c)(2) is authorized, after notice and a hearing, upon showing that unsecured credit cannot be obtained); In re Ames Dep't Stores, Inc., 115 BR 34, 37-39 (Bankr SDNY 1990) (debtor must show that it has made a reasonable effort to seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code).

14. Under section 364(d)(1), a court may authorize a debtor in possession to obtain credit or incur debt secured by a senior or equal lien if "(A) the trustee is unable to obtain such credit otherwise; and (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 USC § 364(d)(1).

15. To demonstrate that the requisite credit is not obtainable on more favorable terms, a debtor need only demonstrate "by good faith effort that credit was not available" without the protections afforded to potential lenders by section 364(d). Bray v. Shenandoah Fed. Sav. & Loan Ass'n (In re Snowshoe Co.), 789 F2d 1085, 1088 (4th Cir 1986). Thus, "[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." Id.; see also In re Ames, 115 BR at 40 (holding that debtor made a reasonable effort to secure financing when it selected the least onerous financing option from the two remaining lenders); In re Reading Tube Indus., 72 BR 329, 332 (Bankr ED Pa 1987) ("Given the 'time is of the essence' nature of this type of financing, we would not require this or any debtor to contact a seemingly infinite number of possible lenders."). Where few lenders are likely to be able and willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." In re Sky Valley, Inc., 100 BR 107, 113 (Bankr ND Ga 1988).

16. This threshold test is satisfied here. The Debtor's senior management and its financial advisors have explored various, alternative financing options, but have found no party

1 willing to advance sufficient credit on more favorable terms than the DIP Facility.

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B. The Existing Secured Creditors Are Adequately Protected

17. The DIP Facility provides that DIP Lender will obtain a "priming" lien on the Collateral senior to the Existing Secured Creditors except with respect to the Non-Primed Liens (i.e., liens with respect to real property taxes and purchase money security interests on the Debtor's equipment). Section 364(d)(1)(B) requires that the interests of the Existing Secured Creditors in the Collateral securing their respective claims be adequately protected.

18. Section 361 of the Bankruptcy Code describes permissible means of adequate protection. Under section 361, adequate protection may be provided by cash payments, replacement liens, and other relief "as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property." 11 USC § 361; see United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd., 484 US 365, 369-73 (1988) (the "interest in property" entitled to protection is "the value of the collateral" that secures the claim). The legislative history of section 361 makes clear that bankruptcy courts are given broad flexibility in deciding what constitutes adequate protection on a case-by-case basis, stating:

This section specifies the means by which adequate protection may be provided. It does not require the court to provide it. To do so would place the court in an administrative role. Instead, the trustee or debtor-in-possession will provide or propose a protection method. If the party that is affected by the proposed action objects, the court will determine whether the protection provided is adequate. The purpose of this section is to illustrate means by which it may be provided and to define the contours of the concept.

HR Rep No 95-595, at 338 (1977), reprinted in 1978 USCCAN 6295; see also Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.), 16 F3d 552, 564 (3d Cir 1994) ("[A] determination of whether there is adequate protection is made on a case by case basis."); MBank Dallas, N.A. v. O'Connor (In re O'Connor), 808 F2d 1393, 1396-97 (10th Cir 1987) (same); Martin v. United States (In re Martin), 761 F2d 472, 474 (8th Cir 1985) (same); accord FDIC v. Mathis (In re Mathis), 64 BR 279, 284 (ND Tex 1986) ("[T]he form of the adequate protection may vary on a case-by-case basis.").

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1 19. The essential purpose of adequate protection is just that: to adequately protect the
2 interests for which creditors bargained prepetition. As the House Report accompanying the
3 Bankruptcy Code explained:

4 It is not intended to be confined strictly to the constitutional protection
5 required. . . . The section, and the concept of adequate protection, is based as
6 much on policy grounds as on constitutional grounds. Secured creditors
7 should not be deprived of the benefit of their bargain. There may be situations
8 in bankruptcy where giving a secured creditor an absolute right to his bargain
9 may be impossible or seriously detrimental to the bankruptcy laws. Thus, this
10 section recognizes the availability of alternate means of protecting a secured
11 creditor's interest. Though the creditor might not receive his bargain in kind,
12 the purpose of the section is to insure that the secured creditor receives in
13 value essentially what he bargained for.

14 HR Rep No. 95-595, at 339; see also In re Worldcom, Inc., 304 BR 611, 618-19 (Bankr SDNY
15 2004) ("[T]he purpose of providing adequate protection is to insure that the secured creditor
16 receives the value for which the creditor bargained prior to the debtor's bankruptcy.") (citing
17 additional authorities). "However, neither the legislative history nor the Bankruptcy Code
18 requires the Court to protect a creditor beyond what was bargained for by the parties." Id at 619.
19 Indeed, the "[c]ourt is not obligated to protect the creditor better than it did itself when making
20 the loan and obtaining security." In re Heatron, Inc., 6 BR 493, 496 (Bankr WD Mo 1980). The
21 interest to be protected by virtue of the adequate protection requirement is the lesser of the value
22 of the debt or the value of assets securing the debt. See In re Triplett, 87 BR 25, 27 (Bankr WD
23 Tex 1988) ("[U]nder the concept of adequate protection — only the preservation of the value of
24 the lien is required.") (citing In re Alyucan Interstate Corp., 12 BR 803, 808 (Bankr D Utah
25 1981)); see also 11 USC § 506.

26 20. The Existing Secured Creditors' interests are adequately protected here for two
reasons. First, there is a significant equity cushion available to them. The evidence will show
that the value of the Debtor's property that secures the Existing Secured Creditors' claims
greatly exceeds the amounts of their respective secured claims. In the case of Rabo, there is an
equity cushion of approximately 40 percent where the value of its collateral is determined on a

going concern basis. See United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 US 365, 370, 108 SCt 626, 630, 98 L Ed 2d 740 (1988); In re Mellor, 734 F2d 1396, 1401 (9th Cir 1984). In Mellor, the Ninth Circuit Court of Appeals recognized that an “equity cushion,” while not specifically mentioned in the Bankruptcy Code, is the classic form of adequate protection that, standing alone, may suffice as adequate protection of a creditors’ interests. Id. Moreover, other bankruptcy courts have commented that the existence of an equity cushion is “the preferred test in determining whether priming of a senior lien is appropriate under section 364.” In re YL West 87th Holdings I LLC 423 BR 421, 441-442 (Bankr SDNY 2010); In re Strug–Div. LLC, 380 BR 505, 513 (Bankr ND Ill 2008); see In re Dunes Casino Hotel, 69 BR 784, 795–96 (Bankr DNJ 1986); In re Reading Tube Indus., Inc., 72 BR 329, 333–34 (Bankr ED Pa 1987).

21. Second, the DIP Facility is necessary to continue the Debtor’s business operations and thereby preserve the going concern value of its property. Where, as here, a debtor’s use of debtor in possession financing protects creditors from loss, the secured creditors are adequately protected without any need for other forms of adequate protection. See, e.g., Orix Credit Alliance, Inc. v. Delta Res., Inc. (In re Delta Res., Inc.), 54 F 3d 722, 730 (11th Cir 1995), cert denied, 516 US 980 (1995); Westchase I Assocs. v. Lincoln Nat’l Life Ins. Co. (In re Westchase I Assocs. L.P.), 126 BR 692, 694 (WDNC 1991); see also In re 499 W. Warren St. Assocs., Ltd. P’ship, 142 BR 53, 56-57 (Bankr NDNY 1992) (finding secured creditor’s interest in collateral adequately protected when cash collateral applied to normal operating maintenance expenditures on collateral property); In re Willowood E. Apartments of Indianapolis II, Ltd., 114 BR 138, 143 (Bankr SD Ohio 1990) (finding secured creditor’s interest in assigned rents extended only to net rents after payment of ordinary, necessary expenses required to maintain and operate the property to preserve its value). Courts have held that adequate protection may be demonstrated by a showing that the going concern value of a debtor is preserved by the debtor’s continuing operations and use of collateral. See, e.g., In re Snowshoe Co., 789 F2d 1087-89 (finding that

1 ski resort would lose 50% to 90% of its fair market value if it ceased operations); In re Constable
 2 Plaza Assocs., L.P., 125 BR 98, 105 (Bankr SDNY 1991) (debtor entitled to use cash collateral
 3 to operate and maintain office building thereby protecting secured lender's collateral and
 4 existing equity cushion).

5 C. The Debtor's Entry into the DIP Loan Agreement Is a Sound Exercise of Business
Judgment and Is Reasonable Under the Circumstances

6
 7 22. Courts generally give broad deference to the business decisions of a debtor. See,
 8 e.g., Stephens Indus., Inc. v. McClung, 789 F2d 386, 390 (6th Cir 1986); Institutional Creditors
 9 of Cont'l Airlines, Inc. v. Cont'l Airlines, Inc. (In re Cont'l Air Lines, Inc.), 780 F2d 1223, 1226
 10 (5th Cir 1986); Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F2d
 11 1063, 1070 (2d Cir 1983); Walter v. Sonwest Bank (In re Walter), 83 BR 14, 19-20 (BAP 9th
 12 Cir. 1987) (quoting In re Cont'l, 780 F2d at 1226). In particular, a bankruptcy court should defer
 13 to a debtor's reasonable business judgment regarding the need for funds so long as the proposed
 14 financing agreement does not contain terms that leverage the bankruptcy process or that benefit a
 15 third party rather than the bankruptcy estate. This was explained by the bankruptcy court in In re
 16 Ames:

17 [A] court's discretion under section 364 is to be utilized on grounds that
 18 permit reasonable business judgment to be exercised so long as the financing
 19 agreement does not contain terms that leverage the bankruptcy process and
 powers or its purpose is not so much to benefit the estate as it is to benefit a
 party-in-interest.

20 115 BR at 40.

21 23. Here, the Debtor's decision to enter into the DIP Loan Agreement represents a
 22 sound exercise of business judgment. Without the financing, the Debtor cannot maintain its
 23 operations and business. If it is unable to do so, its going concern value and the value of its
 24 assets will be substantially and irreparably impaired. The DIP Facility addresses these problems
 25 by providing the Debtor with the funding it needs to meet its operational needs and to fund its
 26 restructuring costs.

24. The terms of the DIP Facility are similar to those often included in complex financing arrangements. The DIP Facility provides, among other things, that the Debtor's postpetition obligations will be secured by liens on its assets, that claims for advances thereunder will be entitled to superpriority, and that the DIP Lender will receive certain other accommodations with respect to the protection of its interests.

25. Courts have recognized that a debtor often must make significant concessions in exchange for financing. See, e.g., In re Ellingsen MacLean Oil Co., 65 BR 358, 365 n.7 (Bankr WD Mich 1986) (chapter 11 postpetition financing is "fraught with dangers for creditors"), aff'd, 834 F2d 599 (6th Cir 1987). Accordingly, courts recognize that a debtor may need to "enter into a 'hard' bargain with a creditor in order to acquire the needed funds to complete reorganization." Id.

26. Lenders often agree to subordinate or "carve-out" from their collateral funds to pay professionals. See Harvis Trien & Beck, P.C. v. Fed. Home Loan Mortgage Corp. (In re Blackwood Assocs., L.P.), 187 BR 856, 860 (Bankr EDNY 1995) (court advised that if professionals really want to be paid they had best insist upon a "real carve out"), aff'd, 153 F3d 61 (2d Cir 1998); In re Ames, 115 BR at 40 (noting practice of district to insist on carve-out for fees in order to preserve adversary system). Here, the Carve-Out covers not only the professional fees of the Debtor, but of any Committee appointed in the Debtor's case.

27. Nor is it atypical for a lender to receive enhanced enforcement remedies. See, e.g., Resolution Trust Corp. v. Official Unsecured Creditors' Comm. (In re Defender Drug Stores, Inc.), 145 BR 312, 317-18 (BAP 9th Cir 1992) (approved postpetition financing arrangement providing that upon event of default under postpetition financing order, debtor would be given 30 days to find alternative financing for, or a buyer of, the business, and if the debtor sold its assets, the lender would be entitled to an enhancement fee of 10% of the gross consideration for the assets). Here, although the automatic stay will be modified to allow the DIP Lender to charge default interest and accelerate the DIP Loan, the DIP Lender will not be

1 permitted to exercise other enforcement rights or remedies with respect to its Collateral without
2 first obtaining an order of the Court granting it relief from the automatic stay to do so.

3 28. In short, the terms of the DIP Facility are not only common in chapter 11 cases,
4 but also are balanced by limitations and restrictions negotiated by the Debtor for the benefit of
5 the estate, its creditors and other parties in interest.

6 Notice

7 29. Notice of this motion has been given to, among other parties, (i) Rabo and its
8 attorneys, (ii) BFS, (iii) the IRS, through the United States Attorney for the District of Oregon,
9 the Attorney General of the United States at Washington, D.C. and the IRS Special Procedures
10 Unit, (iv) Ledeboer, (v) Callisons, (vi) the United States trustee, and (vii) the creditors holding
11 the 20 largest unsecured claims. Further notice is impractical in the circumstances. The Debtor
12 submits that the foregoing constitutes good and sufficient notice and that no other or further
13 notice need be given in the circumstances.

14 WHEREFORE, the Debtor requests entry of an order granting the relief requested herein
15 and such other and further relief as is appropriate.

16 Dated: June 7, 2011.

17 Greene & Markley, P.C.

18 By /s/ David A. Foraker
19 David A. Foraker, OSB #812280
20 Attorneys for Debtor
21
22
23
24
25
26

Exhibit A – DIP Loan Term Sheet

See attached.

Preliminary Indicative Term Sheet
for
Debtor in Possession Credit Loan

May 27, 2011

The following is a summary of proposed terms and conditions for the establishment of a secured loan to the Borrower identified below in its capacity as a Chapter 11 debtor in possession in a case to be commenced in the United States Bankruptcy Court for the District of Oregon, Eugene Office. This Term Sheet is subject to (i) completion of due diligence with respect to the Borrower's business, collateral, assets, financial condition and prospects and (ii) completion of definitive documentation. Further, this Term Sheet, and the terms and conditions hereof, are being provided on a confidential basis and should not be disclosed to any third party other than the attorneys, accountants and financial advisors of the parties hereto, unless required by an order of a court of competent jurisdiction.

Borrower/Debtor In Possession	Olsen Agricultural Enterprises LLC, an Oregon limited liability company, and its affiliates or subsidiaries (" Borrower ")
DIP Lender	Bacchus Capital, L.P. and/ or its affiliates (" DIP Lender " or " Lender ")
Bankruptcy Court	United States Bankruptcy Court for the District of Oregon, Eugene Office (the " Bankruptcy Court ").
Bankruptcy Case	The chapter 11 case to be commenced by the Borrower in the Bankruptcy Court (the " Bankruptcy Case ").
Use of Proceeds	Proceeds from the DIP Loan (as defined herein) shall be used exclusively for funding the following expenses: (x) normal operating expenses consistent with past practices subject to the Approved Budget (as defined herein); (y) fees of the United States Trustee and allowed professional fees (subject to the Carve-Out as defined herein) for the Borrower not to exceed that set forth in the Approved Budget and accrued and unpaid prior to the occurrence of an Event of Default (as defined herein); and (z) the fees and expenses of DIP Lender as set forth herein. None of the proceeds of the DIP Loan, the collateral securing the DIP Loan or the Carve-Out (as defined herein) may be used by the Borrower or any committee of unsecured creditors to investigate or challenge the validity, perfection, priority, extent or enforceability of the DIP Loan, the liens securing the DIP Loan, or the claims of DIP Lender with respect to the foregoing.
DIP Loan	The DIP Lender shall make available to the Borrower a term loan, which term loan shall not exceed USD \$3.0 million in aggregate principal amount (including all Borrower obligations thereunder, the " DIP Financing " or " DIP Loan "), and with the proceeds of such term loan or loans to be applied pursuant to the limitations on the Use of

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	<p>Proceeds described above. Such term loan shall be subject to the Conditions Precedent to Closing and Conditions to the advance. The DIP Loan may be in multiple advances subject to DIP Lender's due diligence, court orders and approval of the DIP Lender.</p> <p>The DIP Financing shall be subject to, among other things, the entry by the Bankruptcy Court of an interim and final order finally and unconditionally approving the DIP Financing pursuant to Section 364 of the Bankruptcy Code on terms and conditions reasonably satisfactory to the DIP Lender (the "Final Order"). No advances shall be made if there is an Event of Default that has occurred and has not been cured or waived.</p>
Closing Date	The first date practicable following the entry of an interim order by the Bankruptcy Court approving the DIP Financing on terms and conditions reasonably satisfactory to the DIP Lender (the " Interim Order "), anticipated to be on or prior to June 17, 2011. The Interim Order and the Final Order are collectively the " DIP Orders ".
Interest Rate	Interest shall be payable monthly in cash in arrears at a rate equal to 12% per annum. All calculations of interest and fees shall be made on the basis of actual number of days elapsed in a 360 day year.
Default Interest Rate	During the continuance of an event of default, a default rate shall apply on all obligations under the DIP Loan at a rate per annum of 4.0% above the then applicable interest rate.
Commitment and Other Fees	A commitment fee equal to 4.0% of the maximum principal amount of the DIP Financing will be fully earned and due and payable to the DIP Lender upon the Closing Date. Additional fees are subject to Lender's due diligence which may include, without limitation, collateral monitoring or exit fees.
Priority	In addition to the priority with respect to the Collateral set forth below, all amounts owing by the Borrower under the DIP Financing in respect thereof at all times will constitute allowed super-priority administrative expense claims in the Borrower's chapter 11 case (the " Chapter 11 Case ") having priority over all administrative expenses of the kind specified in sections 503(b) and 507(b) of title 11 of the United States Code (the " Bankruptcy Code "), subject only to the Carve-Out (as defined below).
Collateral	All amounts owing by the Borrower will be secured pursuant to sections 364(c) and (d)(1) of the Bankruptcy Code by a fully perfected priming, first lien priority

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	security interest and liens in substantially all assets (tangible, intangible, real, personal or mixed) of the Borrower, whether now owned or hereafter acquired, including, without limitation, accounts, inventory, equipment, capital stock in subsidiaries, investment property, instruments, chattel paper, real estate, leasehold interests, contracts, patents, copyrights, trademarks, causes of action, including general intangibles, and all products and proceeds thereof, including all unencumbered assets of the Borrower and, subject only to the Carve-Out (as defined below).
Term	The period from the Closing Date to the earliest to occur of (i) a mutually acceptable period (which shall expire on or before February 15, 2012), (ii) the closing of a merger, sale of stock, change of control, or sale of substantially all of the assets of Borrower, or any other debt or equity issuance by the Borrower, or any other transaction similar to the foregoing, or (iii) the date of the occurrence of an Event of Default under the DIP Financing, (iv) the date the Borrower pays all of the DIP Lender in full and terminates the DIP Financing, or (v) conversion or dismissal of the Bankruptcy Case, or the appointment of a trustee in the Bankruptcy Case (such earliest date, the " <u>Termination Date</u> ").
Mandatory Repayments	In addition to payments on the Termination Date, mandatory repayments of the DIP Financing shall be required in an amount equal to (i) 100% of the net sale proceeds from all asset sales outside the ordinary course of business and (ii) 100% of insurance and condemnation proceeds received by the Borrower, except for customary exceptions for Borrower to re-build upon a casualty subject to qualifications in the definitive loan documents.
Conditions Precedent to Closing	<p>The loan documentation in respect of the DIP Financing will contain the following conditions precedent to closing as determined in Lender's sole and absolute discretion:</p> <ul style="list-style-type: none"> • All due diligence, financial review, loan documentation, collateral and opinions shall be in form and substance reasonably satisfactory to the DIP Lender and their counsel. • The Borrower and the DIP Lender shall have agreed upon an Approved Budget. • With respect to the initial closing, entry of the Interim Order (with no stay thereof) in form and substance acceptable to DIP Lender.

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	<ul style="list-style-type: none">• The Borrower shall have provided evidence of insurance reasonably satisfactory to the DIP Lender, naming the DIP Lender as additional insured and loss payee.• The Borrower shall have provided collateral audits, reports and appraisals as are requested by and in form and substance reasonably satisfactory to the DIP Lender.▪ All motions and other documents to be filed with and submitted to the Bankruptcy Court in connection with the DIP Financing (including, without limitation, the Interim Order and Final Order, as the case may be) shall be in form and substance reasonably satisfactory to the DIP Lender.• All governmental and third party consents and approvals necessary in connection with the DIP Financing and the transactions contemplated thereby shall have been obtained and shall remain in effect.• The Borrower shall provide customary representations and warranties, and financial and negative covenants.• Final approval by Lender's Investment Committee.• No material adverse changes or misrepresentations, misstatements in or omissions from, material furnished to DIP Lender.• There shall have been no material adverse change since the date of this letter in the capital markets generally or in subordinate debt markets.• The making of such loan and advance shall not violate any requirement of applicable law and shall not be enjoined, temporarily, preliminarily or permanently by any governmental authority• The Bankruptcy Court shall have entered an Interim Order in form and substance reasonably satisfactory to the DIP Lender, which order shall be in full force and effect and shall not have been reversed, vacated or stayed and shall not have been amended, supplemented or otherwise modified without the prior written consent of the DIP Lender (such consent not to be unreasonably withheld) (i) authorizing and approving the transactions
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	<p>contemplated thereby, including, without limitation, the granting of the super-priority status, security interests and liens, and the payment of all fees referred to herein, and (ii) lifting the automatic stay to permit the Borrower to perform their obligations under the loan documents and the DIP Lender to exercise their rights and remedies with respect to the DIP Financing provided that the DIP Lender shall provide the Borrower with five (5) business days prior written notice before exercising right and remedies.</p> <ul style="list-style-type: none"> • Borrower will waive, and the DIP Orders shall not effect Borrower's waiver of, any right to obtain alternative post-petition financing senior to the DIP Loan pursuant to Section 364 of the Bankruptcy Code or otherwise unless the proceeds of any such financing are to be applied to the indefeasible payment, in full, in cash, of the DIP Loan. • Key man and other insurance acceptable to DIP Lender, naming DIP Lender as additional insured.
Carve Out	<p>The "Carve-Out" shall mean the following sums having priority ahead of the super priority claims and liens securing the DIP Financing: (i) the payment of any unpaid fees payable to the United States Trustee pursuant to 28 U.S.C. §1930 and (ii) the payment of unpaid claims (whether then or subsequently allowed) for fees and expenses incurred by professionals retained by an order of the Bankruptcy Court, including fees and expenses incurred prior to, and after, the occurrence of an Event of Default, not to exceed \$350,000 in the aggregate, or such other event subject to Lender's due diligence and approval (the "<u>Professional Expense Cap</u>"). No portion of the Carve-Out may be used in connection with the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, objection or other litigation against the DIP Lender.</p>
Representations and Warranties	<p>The loan documentation will contain representations and warranties customary for loans of this size, type and purpose.</p>

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Affirmative Covenants	<p>The loan documentation will contain affirmative and financial reporting covenants customary for loans of this size, type and purpose.</p> <p>The Borrower shall use its best efforts file a plan on terms acceptable to the DIP Lender in its sole and absolute discretion (an "<u>Acceptable Plan</u>") within 90 days of the commencement of the Chapter 11 Case (the "<u>Petition Date</u>"); however, such Acceptable Plan shall be filed no later than 120 days after the Petition Date. Any Acceptable Plan must provide for, <u>inter alia</u>, payment in full of all DIP Loan obligations, together with customary releases and exculpations and such other and further provisions as the DIP Lender shall require in its sole and absolute discretion.</p>
Negative Covenants	<p>The loan documentation will contain negative covenants customary for loans of this size, type and purpose, which may include, but not limited to incurrence of additional debt, capital expenditure limitations, dividend restrictions, limitations on management fees and compensation, no changes in key management without Lender consent, compliance with a cash collateral budget, no waste of, deterioration in, or material adverse event, relating to the collateral, and other negative covenants as are customary in this type of transaction.</p>
Events of Default	<p>The loan documentation will contain customary events of default including, without limitation, the following events of default:</p> <ul style="list-style-type: none"> • failure of the Bankruptcy Court to enter the Interim Order on or before July 1, 2011; • failure of the Bankruptcy Court to enter a Final Order in form and substance reasonably satisfactory to DIP Lender within 90 days of the Closing Date; • the approval by the Bankruptcy Court of the sale of any assets of the Borrower other than as permitted under the DIP Loan documents; • dismissal of the Chapter 11 Case or conversion of any Chapter 11 Case to a chapter 7 case or the merger, sale of stock, change of control, or sale of substantially all of the assets of Borrower; • appointment of a chapter 11 trustee or examiner with expanded powers or other person with expanded powers in the Chapter 11 Case;

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	<ul style="list-style-type: none"> • granting of relief from the automatic stay to permit foreclosure on any material assets of Borrower; • reversal, vacation or stay of the effectiveness of either the Interim Order or the Final Order; • failure of liens or super-priority claims granted with respect to the DIP Financing to be valid, perfected and enforceable in all respects; • a variance of disbursements and net receipts from those reflected in the Approved Budget for such monthly period, which variance amount shall be set forth in the definitive DIP Loan documents; • any violation of covenants in the loan documentation, including without limitation, no material adverse changes in the finances, operations, assets, collateral or other matters of Borrower; and • other event of defaults customary for a secured lender of a debtor in possession loan. <p>The DIP Lender will have customary rights and remedies for a secured lender as specified in the definitive loan documents.</p>
Budget and Reporting	<p>The Borrower shall provide the following periodic reports:</p> <p>The Borrower and the DIP Lender shall agree upon a budget (the "Approved Budget") prior to the Closing Date projecting operations for the Term ("Budget Period") in a form reasonably satisfactory to the DIP Lender. On a monthly basis, the Borrower shall provide to the DIP Lender an updated budget for the Budget Period in substantially the same form as the previous budget and which upon acceptance by the DIP Lender, shall become the Approved Budget.</p> <p>The Borrower shall provide the DIP Lender with monthly variance reports reflecting the actual cash receipts and disbursements for each monthly period within seven (7) business days after the end of such monthly period, and showing the percentage variance of actual receipts and disbursements from those reflected in the Approved Budget for such period.</p> <p>The Borrower shall provide the DIP Lender with weekly</p>

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	<p>variance reports reflecting the actual cash receipts and disbursements for each weekly period within three (3) business days after the end of such weekly period.</p> <p>In addition, Borrower shall provide all financial reports requested by Lender, including without limitation, (i) internally prepared financial statements within thirty (30) days of each calendar month end; and (ii) a compliance certificate issued monthly and weekly executed by the chief financial officer or other senior member of management acceptable to the Lender, certifying compliance with covenants contained in the Legal Documentation. All monthly financial reports should include a balance sheet, income statement and statement of cash flows prepared in accordance with customary, past accounting practices, accompanied by a management discussion and analysis of the appropriate reporting period, compared to the previous year and the budget.</p>
Indemnification	The loan documentation will contain an indemnification provision customary for loans of this size, type and purpose.
Lender Expenses	The Borrower shall pay all reasonable and documented out of pocket costs and expenses of the DIP Lender, (including all reasonable and documented fees, expenses and disbursements of counsel, financial advisors and consultants) incurred in connection with the DIP Financing, including, without limitation in connection with the preparation, execution and delivery of the loan documentation and the funding of the DIP Financing and any amendment or waiver of any provision of the loan documentation. At the execution this term sheet, Borrower will submit a \$30,000 non-refundable deposit to cover expenses of the Lender (which deposit is not an estimate or cap of Lender expenses), and such deposit shall be delivered to Lender prior to the Petition Date and commencement of the Borrower's Chapter 11 Case.
Governing Law	State of California, except as governed by the Bankruptcy Code.
Indemnification	Borrower agrees (a) to indemnify and hold harmless Lender and its affiliates and controlling persons and their respective officers, directors, employees, agents, attorneys, members and successors and assigns of each of the foregoing (each, an "Indemnified Person") from and against any and all losses, claims, damages, liabilities and expenses, joint or several, to which any such Indemnified

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	<p>Person may become subject arising out of or in connection with this Term Sheet, the transactions contemplated hereby or any related transaction, or any claim, litigation, investigation or proceeding relating to any of the foregoing, regardless of whether any such Indemnified Person is a party thereto, and to reimburse each such Indemnified Person upon demand for any reasonable legal or other expenses incurred in connection with investigating or defending any of the foregoing; provided that the foregoing indemnity will not, as to any Indemnified Person, apply to losses, claims, damages, liabilities or related expenses to the extent they are found in a final, non-appealable judgment of a court of competent jurisdiction to have resulted from the willful misconduct or gross negligence of such Indemnified Person, and (b) to reimburse each Lender from time to time, upon presentation of a summary statement, for all reasonable out-of-pocket costs and expenses (including but not limited to costs and expenses of the Lenders' due diligence, travel expenses, reasonable fees, disbursements and other charges of counsel to the Lenders), in each case incurred in connection with the transactions contemplated hereby or any related transaction and the preparation of this Term Sheet or the loan documentation, and the administration, amendment, modification or waiver thereof (or any proposed amendment, modification or waiver thereof), whether or not closing of the transactions contemplated hereby occurs or any loan documentation is executed and delivered.</p> <p>No Indemnified Person shall be liable for any indirect, special, punitive or consequential damages in connection with its activities related to this Term Sheet or the transactions contemplated hereby.</p>
Confidentiality / Non-Binding	<p>Each party hereto will keep and will cause each of its affiliates and representatives to keep the terms set forth herein confidential and shall not use or disclose such terms (other than with or to current directors, officers, shareholders, partners, members, employees, counsel, accountants and advisors for purposes of negotiating and finalizing and terms and transactions contemplated herein) without the express written consent of the other party hereto.</p>
Break-Up Fee	<p>If the Borrower (or its equity holders) (a) determines for any reason not to proceed with the closing of the DIP Financing as contemplated herein and proceeds with an alternate credit facility or loan in lieu thereof, (b) enters into a merger, sale of stock, change of control,</p>

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	recapitalization or sale of substantially all of the assets of Borrower, or any other debt or equity issuance by the Borrower, or any other transaction similar to the foregoing with a third party other than Lender or (c) violates or breaches the "Exclusivity" provision herein, the Borrower shall immediately pay a break-up fee of \$125,000 (the " Break-Up Fee ") on the earliest date of the foregoing, or that the Borrower enters into, or announces its intention to enter into, such agreement, including any commitment letter, term sheet, letter of intent regarding the same. The Break-Up Fee shall be the sole and exclusive remedy for a default hereunder as the full, agreed upon and liquidated damages, and not as a penalty, and all other damages or remedies are hereby waived. The payment of such amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages.
Exclusivity	Upon acceptance of this Term Sheet, the Borrower, its employees, shareholders and representatives agree that they will not enter into or continue discussions or negotiations with any alternative sources of capital or debt, or enter into any agreements regarding alternative sources of capital or debt. This exclusivity period will lapse on July 1, 2011 if a firm commitment to lend has not been agreed to between Lender and Borrower.
Expiration Date	7:00 pm P.S.T. on May 27, 2011, or earlier at the option of Lender if the Lender determines that it no longer has an interest in the transaction. All parties will endeavor to close this transaction promptly upon the entry of the Interim Order.

The paragraphs of this Indicative Term Sheet entitled "Confidentiality," "Indemnification", "Lender's Expenses", "Break-Up Fee" and "Exclusivity" are intended to be binding and enforceable. All other proposed terms and understandings set forth in this Indicative Term Sheet are intended only to provide a framework upon which to draft definitive loan documents and are not intended to be binding or enforceable. By signing this letter, both parties acknowledge that: (i) this letter is not a binding commitment on the part of any person to provide or arrange for financing on the terms and conditions set forth herein or otherwise; (ii) any such commitment on the part of the Lender would be in a separate written instrument signed by the Lender following satisfactory completion of the conditions contained herein; (iii) this letter supersedes any and all discussions and understandings, written or oral, between or among the Lender and any other person as to the subject matter hereof; and (iv) the Lender may, at any level of its approval process, decline any further consideration of the proposed financing, and terminate its approval process. Under no circumstances would the Lender or any of its affiliates be liable for any punitive, exemplary, consequential or indirect damages which may be alleged to result from this letter, or the proposed financing or any other related financing.

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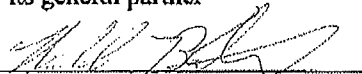
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IN WITNESS WHEREOF, this Term Sheet has been entered into as of this 27th day of May, 2011.

DIP LENDER:

BACCHUS CAPITAL, L.P.

By: SBG Wines Capital GP LLC,
its general partner

By: 
Name: Michael Balisteri
Title: Vice President

BORROWER:

**OLSEN AGRICULTURAL
ENTERPRISES LLC**

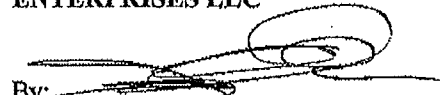
By: 
Name: JAMES OLSEN
Title: MANAGER

Exhibit B – Proposed Form of Interim Order

See attached.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. 11-62723-fra11
Olsen Agricultural Enterprises LLC,)
an Oregon limited liability company,) Chapter 11
Debtor.) INTERIM ORDER (I)
AUTHORIZING DEBTOR TO
OBTAIN POSTPETITION SECURED
FINANCING, (II) GRANTING
ADEQUATE PROTECTION TO
PREPETITION SECURED PARTIES
AND (III) SCHEDULING A FINAL
HEARING

Olsen Agricultural Enterprises LLC (the “Debtor”)¹ having filed its motion [Dkt #___] (the “Motion”) for interim and final debtor in possession financing orders authorizing it to, among other things, (i) incur postpetition secured indebtedness, (ii) grant security interests and superpriority claims, and (iii) grant adequate protection, pursuant to sections 105(a), 362, and 364(c), (d), and (e) of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), and Rules 2002,

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Preliminary Indicative Term Sheet for Debtor in Possession Credit Loan dated May 27, 2011 (the “Term Sheet”).

4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and having sought the following relief:

(a) This Court’s authorization, pursuant to Bankruptcy Code sections 105(a), 362, and 364(c), (d), and (e) and Bankruptcy Rules 2002, 4001 and 9014, for the Debtor to enter into a debtor in possession credit agreement pursuant to the terms and conditions of the Term Sheet (a copy of which is attached to the Motion as Exhibit A) with Bacchus Capital, L.P. (the “DIP Lender”) for a loan (the “DIP Loan”) in the aggregate principal amount of \$3,000,000 in accordance with the terms and conditions set forth in the DIP Loan Documents. As used herein, the term “DIP Loan Documents” shall refer collectively to the Term Sheet, the Interim Order, the DIP Credit Agreement dated June __, 2011 and the Final Order (as defined below);

(b) This Court’s authorization to grant to the DIP Lender (i) superpriority administrative expense status pursuant to section 364(c)(1) of the Bankruptcy Code with respect to all obligations of the Debtor under the DIP Loan Documents, the Interim Order and the Final Order (collectively, the “DIP Loan Obligations”), (ii) liens pursuant to Bankruptcy Code sections 364(c)(2) and 364(c)(3), and (iii) priming liens pursuant to section 364(d) of the Bankruptcy Code;

(c) This Court’s approval, pursuant to Bankruptcy Code sections 361 and 364, of the form and manner of adequate protection set forth herein to be provided to (i) Rabo Agrifinance, Inc. (“Rabo”); (ii) BFS International, LLC (“BFS”); (iii) United States of America, acting by and through the Internal Revenue Service (the “IRS”); (iv) Ledeboer Seed, LLC (“Ledeboer”); and (v) Callisons, Inc. d/b/a I.P. Callisons and Sons (“Callisons”) (collectively, the “Existing Secured Creditors” and the respective liens of the Existing Secured Creditors, the “Existing Liens”);

(d) This Court’s scheduling of an interim hearing (the “Interim Hearing”) pursuant to Bankruptcy Rule 4001(c)(2) to consider the entry of an interim order in the

form hereof (this “Interim Order”) which, among other things, (i) approves, on an interim basis, the postpetition secured financing to be made pursuant to the DIP Loan Documents, (ii) authorizes the Debtor to execute the DIP Loan Documents and to obtain advances on an interim basis in accordance with the DIP Loan Documents in the aggregate principal amount of \$500,000, and (iii) grants adequate protection to the Existing Secured Creditors;

(e) This Court’s scheduling of a final hearing (the “Final Hearing”) to consider entry of a final order (the “Final Order”) which, among other things, (i) approves, on a final basis, the DIP Loan Documents, (ii) authorizes, on a final basis, the DIP Loan to be made pursuant to the DIP Loan Documents in the aggregate principal amount of \$3,000,000 for the purposes of funding expenditures consistent with the budget attached hereto as Exhibit A (the “Approved Budget”), subject to the variances permitted herein, and (iii) grants, on a final basis, adequate protection to the Existing Secured Creditors; and

(f) This Court’s finding that notice of the Interim Hearing was sufficient and adequate, and no other or further notice being required.

The Interim Hearing having been held on June 13, 2011; and based upon all of the pleadings filed with this Court, the evidence presented at the Interim Hearing and the entire record herein; and this Court having heard and resolved or overruled all objections to the interim relief requested in the Motion; and this Court having noted the appearances of all parties in interest; and it appearing that the relief requested in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and consideration, and sufficient cause appearing therefor,

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1 **IT IS HEREBY FOUND:**²

2 A. Petition Date. On June 1, 2011 (the "Petition Date"), the Debtor filed
3 herein a voluntary petition under Chapter 11 of the Bankruptcy Code. The Debtor is
4 continuing in the management and possession of its business and properties as debtor in
5 possession under sections 1107 and 1108 of the Bankruptcy Code. As of the date hereof,
6 no trustee or examiner has been requested or appointed in this case, and the United States
7 trustee has not appointed an official committee of creditors.

8 B. The Debtor's Prepetition Merger. The Debtor is the surviving entity of a
9 merger transaction that was consummated on June 1, 2011. In the merger transaction,
10 Olsen Agricultural Company, Inc., an Oregon corporation ("OAC"), Jenks-Olsen Land
11 Co., an Oregon general partnership ("JOLC"), Olsen Vineyard Company, LLC, an
12 Oregon limited liability company ("OVC"), and The Olsen Farms Family Limited
13 Partnership ("OFFLP") were merged with and into the Debtor. OAC, JOLC, OVC and
14 OFFLP were co-borrowers under the term loan originally made by AXA Equitable Life
15 Insurance Company and subsequently purchased by Rabo, and OAC, JOLC and OVC
16 were co-borrowers under the line of credit loans made by Rabo Agrifinance, Inc. In
17 connection with the merger transaction, other related parties that pledged real estate
18 collateral to support the line of credit loans agreed to contribute such property to the
19 Debtor in exchange for the right to receive ownership interests in the Debtor.

20 C. The Debtor's Business. The Debtor operates an agricultural enterprise on
21 approximately 7,762 acres of owned and leased land located in Benton, Linn and Polk
22 Counties. Its business is comprised principally of three divisions: (a) Olsen Seed
23 Company, which produces and sells a variety of grass seed and grains on approximately
24 _____

25 ² Findings of fact shall be construed as conclusions of law, and conclusions of law
26 shall be construed as findings of fact, pursuant to Bankruptcy Rule 7052

5,934 acres; (b) Olsen Agriculture, which grows and sells peppermint, nursery stock, squash, hazelnuts and blueberries on approximately 1,334 acres; and (c) Olsen Family Vineyards, which grows a variety of grapes on approximately 494 acres and produces and sells quality wines under the “Viridian” label as well as private labels. As of the date hereof, the Debtor has 45 employees, including management personnel.

D. Jurisdiction; Venue. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334 and LR 2100.1. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(D). Venue is proper under 28 U.S.C. § 1408.

E. Debtor’s Stipulations. In requesting postpetition financing under the DIP Loan Documents, the Debtor acknowledges, represents, stipulates, and agrees that:

(i) in entering into the DIP Loan Documents, and as consideration therefor, the Debtor hereby agrees that until such time as all DIP Loan Obligations are indefeasibly paid in full in cash and the commitments related thereto are terminated in accordance with the terms of the DIP Loan Documents, the Debtor shall not in any way grant, seek to grant, or cause to be granted any lien and/or claim that is senior to or *pari passu* with any of the liens, security interests and claims provided under this Interim Order to the DIP Lender, including, without limitation, by offering a subsequent lender or any other party a superior or *pari passu* lien or claim pursuant to Bankruptcy Code section 364(d), or otherwise, except with respect to the Carve-Out; and

(ii) the DIP Lender is not and shall not be deemed to be a control person or insider of the Debtor by virtue of any of the actions taken by such parties in respect of or in connection with the DIP Loan Obligations.

F. Purpose and Necessity of Financing. The Debtor requires the financing described in the Motion to fund the necessary and critical ordinary course expenses of maintaining and preserving its business consistent with the terms set forth in the DIP Loan Documents, and for other purposes permitted by the DIP Loan Documents. If the

Debtor does not obtain authorization to borrow under the DIP Loan Documents and the DIP Loan is not approved, the Debtor will suffer immediate and irreparable harm. The Debtor is unable to obtain adequate unsecured credit allowable as an administrative expense under Bankruptcy Code section 503, or other financing under Bankruptcy Code sections 364(c) or (d), on equal or more favorable terms than those set forth in the DIP Loan Documents based on the totality of the circumstances. Moreover, loan advances in the amount provided by the DIP Loan Documents are not available to the Debtor without granting the DIP Lender superpriority claims, priming liens, and security interests, pursuant to Bankruptcy Code sections 364(c)(1), 364(c)(2), 364(c)(3) and 364(d), as provided in this Interim Order and the DIP Loan Documents. After considering all alternatives, the Debtor determined, in the exercise of its prudent business judgment, that the DIP Loan provided under the DIP Loan Documents represents the best financing package available to it and is in the best interests of the estate. The adequate protection provided herein and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code and adequately protect any non-consenting parties' interests in the Collateral.

G. Good Faith. The DIP Loan Documents have been negotiated in good faith and at arms' length by the Debtor and the DIP Lender. The DIP Loan and/or other financial accommodations made to the Debtor by the DIP Lender pursuant to this Interim Order and/or the DIP Loan Documents shall be deemed to have been extended by the DIP Lender in good faith, as that term is used in Bankruptcy Code section 364(e), and the DIP Lender shall be entitled to all protections afforded thereunder, including, without limitation, the full protection of Bankruptcy Code section 364(e) in the event that this Interim Order or any provision thereof is vacated, reversed or modified, on appeal or otherwise. The terms of the DIP Loan Documents are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and

are supported by reasonably equivalent value and fair consideration.

H. Consideration. The Debtor will receive and has received fair and reasonable consideration in exchange for access to the DIP Loan and all other financial accommodations provided under the DIP Loan Documents and this Interim Order.

I. Notice. Sufficient and adequate notice of the Interim Hearing and the entry of this Interim Order have been given in accordance with Bankruptcy Rule 4001, and no other or further notice need be given for entry of this Interim Order.

J. Immediate Entry of Interim Order. The Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2). The Motion and this Interim Order comply with Local Bankruptcy Rule 4001-2. The permission granted herein to enter into the DIP Loan Documents and to obtain funds thereunder is necessary to avoid immediate and irreparable harm to the estate. Entry of this Interim Order is in the best interests of the Debtor's estate as its implementation will provide for payment of the necessary and critical ordinary course expenses of maintaining and preserving the Debtor's business and will further enhance the Debtor's prospects for a successful reorganization.

Based upon the foregoing findings, acknowledgements, and conclusions, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. Disposition. The Motion is granted on an interim basis, subject to the terms set forth herein, and the terms and provisions of the DIP Loan Documents are approved in all respects. Any objections to the Motion that have not previously been withdrawn or resolved are hereby overruled on their merits. This Interim Order shall be valid, binding on all parties in interest, and fully effective immediately upon entry notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, and 9014. The terms and provisions of the DIP Loan Documents are approved on an interim basis.

2. Authorization. The Debtor is hereby authorized to immediately obtain a DIP Loan, pursuant to the terms of this Interim Order and subject to the terms of the DIP Loan Documents, in the aggregate principal amount of \$500,000. Advances under the DIP Loan Documents shall be used by the Debtor to fund, in accordance with the DIP Loan Documents, its expenses in accordance with the Approved Budget (and the variances permitted thereto).

3. Authority to Execute and Deliver Necessary Documents.

(a) The Debtor is authorized to negotiate, prepare, enter into, and deliver the DIP Loan Documents, in each case including any amendments thereto. The Debtor is further authorized and directed to negotiate, prepare, enter into and deliver any UCC financing statements, pledge and security agreements, and mortgages or deeds of trust encumbering all of the Collateral and securing all of the DIP Loan Obligations.

(b) The Debtor is hereby further authorized to (i) perform all of its obligations under the DIP Loan Documents, and such other agreements as may be required by the DIP Loan Documents to give effect to the terms of the financing provided for therein and in this Interim Order, and (ii) perform all acts required under the DIP Loan Documents and this Interim Order, including, without limitation, the payment of loan fees and the reimbursement of present and future costs and expenses (including, without limitation, the DIP Lender's attorneys' and other advisors' fees and expenses), paid or incurred by the DIP Lender as provided for in the DIP Loan Documents. All such unpaid fees, costs, and other expenses shall be included and constitute part of the principal amount of the DIP Loan Obligations and be secured by the Collateral (as defined below) as provided in the DIP Loan Documents and this Interim Order.

(c) All DIP Loan Obligations shall constitute valid and binding obligations of the Debtor, enforceable against it and its successors and assigns (including, without limitation, any trustee or other estate representative in this Chapter 11 case or in

any superseding Chapter 7 case), in accordance with the terms of the DIP Loan Documents and the terms of this Interim Order, and no obligation, payment, transfer or grant of security under the DIP Loan Documents or this Interim Order shall be voidable or recoverable under the Bankruptcy Code or under any other applicable law or subject to any avoidance, recharacterization, subordination (whether equitable, contractual or otherwise), or any other challenges under the Bankruptcy Code or any other applicable law or regulation by any person or entity.

4. DIP Lender's Superpriority Claim. The DIP Lender is hereby granted an allowed superpriority administrative expense claim (the "Superpriority Claim") pursuant to Bankruptcy Code section 364(c)(1) for all DIP Loan Obligations, having priority over any and all other administrative expense claims, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kinds specified in or arising or ordered under Bankruptcy Code sections 503(b), 507(b), or otherwise, subject and subordinate in priority of payment only to the payment of the Carve-Out. Except as set forth herein, no other superpriority administrative expense claims under Bankruptcy Code section 364(c)(1) shall be granted or allowed in this Chapter 11 case.

5. DIP Liens.

(a) The DIP Loan Obligations shall be secured by:

(i) valid, properly perfected, first priority senior liens on all now existing and hereafter acquired (whether before or after the Petition Date) assets of the Debtor of any nature whatsoever, real and personal, tangible and intangible, including, without limitation, accounts receivable, general intangibles, payment intangibles, supporting obligations, investment property, development orders, environmental permits or other approvals to develop any real property, machinery, equipment, subsidiary capital stock, chattel paper, documents, instruments, deposit accounts, contract rights, tax

1 refunds, and all rights, claims, and other causes of action of the Debtor and the Debtor's
 2 estate (including any actions asserted by the Debtor or any subsequently appointed
 3 trustee or representative of the Debtor's estate under any section of the Bankruptcy Code,
 4 and in each case, all proceeds resulting therefrom, excluding, however, avoidance actions
 5 under sections 544, 545, 547, 548, 549, 550, 551, or 553 of the Bankruptcy Code)
 6 (collectively, the "Collateral") pursuant to section 364(d)(1) of the Bankruptcy Code,
 7 with such liens securing the DIP Loan Obligations to prime and be senior in priority to all
 8 existing security interests in and liens on the Collateral other than (A) statutory liens that
 9 secure claims of governmental units for ad valorem property taxes or similar impositions,
 10 and (B) validly perfected purchase money security interests in equipment extant as of the
 11 Petition Date (collectively, the "Non-Primed Liens"); provided, however, if it is
 12 determined that the Debtor has an interest in any commercial tort claims or tax refunds
 13 that are property of the Debtor's estate, the proceeds of such interests shall be part of the
 14 Collateral;

15 (ii) perfected, first-priority senior liens, pursuant to Section
 16 364(c)(2) of the Bankruptcy Code, on that portion of the Collateral that is unencumbered
 17 property of the Debtor; and

18 (iii) perfected, second-priority liens, pursuant to Bankruptcy Code
 19 section 364(c)(3), on that portion of the Collateral subject to any Non-Primed Liens.

20 (b) In each case, the Collateral shall also include any and all rents,
 21 issues, products, offspring and profits generated by any item of Collateral, without the
 22 necessity of any further action or any kind or nature by the DIP Lender in order to claim
 23 or perfect such interests.

24 (c) The DIP Liens shall not at any time be (i) made subject or
 25 subordinate to, or made *pari passu* with, any other lien, security interest or claim existing
 26 as of the Petition Date, or created under Bankruptcy Code section 364(d) or otherwise,

1 other than the Non-Primed Liens, or (ii) subject to any lien or security interest that is
 2 avoided and preserved for the benefit of the Debtor's estate under Bankruptcy Code
 3 section 551.

4 (d) The DIP Liens, Superpriority Claim, and other rights and remedies
 5 granted under this Interim Order to the DIP Lender shall continue in this Chapter 11 case
 6 and in any superseding Chapter 7 case, and such liens and security interests shall
 7 maintain their priority as provided in this Interim Order until all the DIP Loan
 8 Obligations have been indefeasibly paid in full in cash and completely satisfied and the
 9 DIP Lender's commitments have been terminated in accordance with the DIP Loan
 10 Documents.

11 6. Fees. The Debtor is hereby authorized to pay all such interest, fees, costs,
 12 and expenses in accordance with the terms of the DIP Loan Documents and this Interim
 13 Order, without the DIP Lender or its counsel having to file any further application with
 14 this Court for approval or payment of such fees, costs or expenses; provided, however,
 15 that the DIP Lender shall furnish summary documentation (which may be redacted in
 16 part) of the same to the U.S. Trustee or any official committee of unsecured creditors
 17 ("Committee") appointed in this Chapter 11 case upon written request. For the avoidance
 18 of doubt, such fees include the Commitment Fee (as described in the Term Sheet) and an
 19 exit fee equal two percent (2%) of the maximum principal amount of the DIP Loan,
 20 which shall be fully earned and due and payable upon the Maturity Date.

21 7. Amendments, Consents, Waivers, and Modifications. The Debtor and the
 22 DIP Lender may enter into any non-material amendments, consents, waivers or
 23 modifications to the DIP Loan Documents, including amendments to the Approved
 24 Budget, in each case without the need for further notice and hearing or any order of this
 25 Court; provided, however, that no such amendment or waiver shall increase the amount
 26 of the DIP Lender's lending commitment.

1 8. Term. All DIP Loan Obligations shall be due and payable, and repaid in
 2 full, in cash, on the date (the “Maturity Date”) that is the first to occur of: (i) February 15,
 3 2012; (ii) the effective date of a plan of reorganization confirmed in this Chapter 11 case;
 4 (iii) conversion or dismissal of this Chapter 11 case; (iv) appointment of a trustee in this
 5 Chapter 11 case; or (v) the occurrence of an Event of Default under and as defined in the
 6 DIP Loan Documents.

7 9. Interest on DIP Loan Obligations. Interest on the DIP Loan Obligations
 8 shall accrue at twelve percent (12%) per annum and be payable monthly in arrears. The
 9 default rate of interest will be four percent (4%) higher than the rate otherwise payable.

10 10. Adequate Protection for Existing Secured Creditors. The Existing Secured
 11 Creditors have not consented to the incurrence of the DIP Loan Obligations by the
 12 Debtor under the DIP Loan Documents and the Debtor’s granting of priming liens in
 13 connection therewith. The Debtor acknowledges and stipulates that the Existing Secured
 14 Creditors are entitled, pursuant to Bankruptcy Code sections 361 and 364(d)(1), to
 15 adequate protection of their respective interests in the Debtor’s prepetition property (the
 16 “Prepetition Collateral”), in exchange for the priming of their respective security interests
 17 in and liens on the Prepetition Collateral by the DIP Liens being granted to the DIP
 18 Lender pursuant to the DIP Loan Documents and this Interim Order. As adequate
 19 protection, the Existing Secured Creditors are hereby granted the protections described in
 20 clauses (a) and (b) below:

21 (a) Adequate Protection Liens. Pursuant to Bankruptcy Code sections
 22 361 and 364(d), as adequate protection of the respective interests of the Existing Secured
 23 Creditors in the Prepetition Collateral against any diminution in the value of their
 24 interests in the Prepetition Collateral resulting from the grant of the DIP Liens, each of
 25 the Existing Secured Creditors is hereby granted a continuing valid, binding, enforceable
 26 and perfected postpetition lien on the Collateral (the “Adequate Protection Liens”). The

Adequate Protection Liens shall be junior in priority only to: (i) the DIP Liens, (ii) the Replacement Liens granted under the Interim Order Authorizing Debtor to Use Cash Collateral entered herein on June 3, 2011, as Document #23 (the “Interim Cash Collateral Order”) and under any subsequent cash collateral orders, and (iii) all validly perfected and enforceable security interests in and liens on the Collateral extant as of the Petition Date; and will have the same validity, enforceability and relative priorities as the respective prepetition security interests and liens of the Existing Secured Creditors.

(b) Adequate Protection Claims. As further adequate protection of the respective interests of the Existing Secured Creditors in the Prepetition Collateral against any diminution in the value of their interests in the Prepetition Collateral resulting from the grant of the DIP Liens, each of the Existing Secured Creditors shall have an administrative expense claim under Bankruptcy Code section 503(b) that will have superpriority as provided in Bankruptcy Code section 507(b) (the “Adequate Protection Claims”). The Adequate Protection Claims shall be junior in priority to (i) the DIP Lender’s Superpriority Claim, and (ii) the superpriority administrative expense claims awarded to the Existing Secured Creditors under the Interim Cash Collateral Order and under any subsequent cash collateral orders.

11. Carve-Out.

Notwithstanding anything to the contrary in the Approved Budget or otherwise, prior to the occurrence of an Event of Default, the allowed fees and expenses incurred by estate professionals that may be paid prior to the occurrence of an Event of Default shall be subject to an aggregate cap of \$600,000. Upon the occurrence and during the continuance of an Event of Default with respect to which the DIP Lender provides written notice to counsel for the Debtor of the cessation of funding under the DIP Loan Documents (the “Carve-Out Trigger Notice”), to the extent unencumbered funds are not available to pay allowed administrative expenses in full, the DIP Liens, the

1 Superpriority Claim, the Adequate Protection Claims and the Adequate Protection Liens
 2 shall be subject to the payment of the Carve-Out. For purposes of this Interim Order, the
 3 “Carve-Out” shall mean (i) an amount not to exceed \$300,000 on account of all allowed
 4 professional fees and expenses incurred by the estate professionals prior to delivery of the
 5 Carve-Out Trigger Notice, but which fees and expenses shall not exceed the amounts set
 6 forth in the Approved Budget for such items through the date of such notice less any
 7 amounts actually paid to or on account of such professionals with respect to such period
 8 of time, plus (ii) \$50,000 for the payment of allowed professional fees and expenses
 9 (including those of a Chapter 7 trustee and its professionals) incurred by the estate arising
 10 after delivery of the Carve-Out Trigger Notice; plus (iii) fees incurred pursuant to 28
 11 U.S.C. § 1930(a)(6) and fees payable to the clerk of the Bankruptcy Court, to the extent
 12 such fees were incurred prior to delivery of the Carve-Out Trigger Notice. All amounts
 13 payable as part of the Carve-Out shall only be paid to the extent subsequently allowed by
 14 order of this Court.

15 (a) No portion of the Carve-Out may be used in connection with the
 16 investigation (including discovery proceedings), initiation or prosecution of any claims,
 17 causes of action, objection or other litigation against the DIP Lender.

18 (b) The DIP Lender shall not be responsible for the direct payment or
 19 reimbursement of any fees or disbursements of any professionals incurred in connection
 20 with this Chapter 11 case or any superseding Chapter 7 case. Nothing in this Interim
 21 Order or otherwise shall be construed to obligate the DIP Lender in any way to pay
 22 compensation to or reimburse expenses of any professional in this case, or to guarantee
 23 that the Debtor has sufficient funds to pay such compensation or reimbursement, except
 24 to the extent of the Carve-Out.

25 (c) No liens, claims, interests or priority status, other than the Carve-
 26 Out, having a lien or administrative priority superior to *pari passu* with that of the DIP

Liens or the Superpriority Claim granted by this Interim Order, shall be granted while any portion of the DIP Loan Obligations remain outstanding, or any commitment under the DIP Loan Documents remains in effect, without the prior written consent of the DIP Lender.

(d) Effective upon entry of this Interim Order, during the period between entry of this Interim Order and entry of the Final Order, no party shall be entitled, directly or indirectly, to (i) charge the Carve-Out or the Collateral, whether by operation of Bankruptcy Code sections 105, 506(c) or 552(b) or otherwise, or (ii) direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of Collateral after an Event of Default under the DIP Loan Documents, or termination or breach under the DIP Loan Documents. Effective upon entry of the Final Order, no party shall be entitled, directly or indirectly, to (i) charge the Carve-Out or the Collateral, whether by operation of Bankruptcy Code sections 105, 506(c) or 552(b) or otherwise, or (ii) direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of Collateral after an Event of Default under the DIP Loan Documents, or termination or breach under the DIP Loan Documents.

12. Release. Upon entry of the Final Order, the Debtor, on behalf of itself and its estate (including any successor trustee or other estate representative in the Bankruptcy Case or Successor Case), forever and irrevocably (i) releases, discharges, and acquits the DIP Lender, and each of its respective former, current or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, and predecessors in interest of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type, including, without limitation, any so-called "lender liability" or equitable

subordination claims or defenses, solely with respect to or relating to the negotiation and entry into the DIP Loan Documents, and (ii) waives any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability and nonavoidability of the DIP Liens and Superpriority Claim.

13. Limitation on Additional Surcharges. No action, inaction or acquiescence by the DIP Lender, including funding the Debtor's ongoing operations under this Interim Order, shall be deemed to be or shall be considered as evidence of any alleged consent by the DIP Lender to a charge against the Collateral pursuant to Bankruptcy Code sections 506(c), 552(b) or 105(a), and as provided in paragraph 11(d) above, no such costs, fees or expenses shall be so charged against the Collateral without the prior written consent of the DIP Lender, to the extent of its interests in such Collateral. The DIP Lender shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the Collateral.

14. Additional Perfection Measures. The DIP Liens and the Adequate Protection Liens shall be perfected by operation of law immediately upon entry of this Interim Order. None of the Debtor, the DIP Lender, or the Existing Secured Creditors shall be required to enter into or obtain landlord waivers, mortgagee waivers, bailee waivers, warehouseman waivers or other waiver or consent, or to file or record financing statements, mortgages, deeds of trust, leasehold mortgages, notices of lien or similar instruments in any jurisdiction, or obtain consents from any licensor or similarly situated party in interest, or take any other action in order to validate and to perfect the DIP Liens or the Adequate Protection Liens.

(a) The DIP Lender and the Existing Secured Creditors may, but shall not be obligated to, obtain consents from any landlord, licensor or other party in interest, file mortgages, financing statements, notices of lien or similar instruments, or otherwise

record or perfect such security interests and liens, in which case:

(i) all such documents shall be deemed to have been recorded and filed as of the time and on the date of entry of this Interim Order; and

(ii) no defect in any such act shall affect or impair the validity, perfection and enforceability of the liens granted hereunder.

(b) In lieu of obtaining such consents or filing any such mortgages, financing statements, notices of lien or similar instruments, the DIP Lender and Existing Secured Creditors may, but shall not be obligated to, file a true and complete copy of this Interim Order in any place at which any such instruments would or could be filed, together with a description of Collateral or Prepetition Collateral, as applicable, and such filings by the DIP Lender and the Existing Secured Creditors shall have the same effect as if such mortgages, deeds of trust, financing statements, notices of lien or similar instruments had been filed or recorded at the time and on the date of entry of this Interim Order.

15. Events of Default. The occurrence of any of the following shall constitute an Event of Default under this Interim Order upon five (5) business days' written notice to the Debtor by the DIP Lender:

(a) the failure to pay the DIP Loan Obligations in cash in full upon the Maturity Date, or when due if prior to the Maturity Date;

(b) breach by the Debtor of any of its representations, warranties or covenants under the DIP Loan Documents, which breach is not cured within ten (10) business days of written notice by the DIP Lender to the Debtor of such breach and written notice shall also be provided to the U.S. Trustee and any Committee appointed in this case;

(c) the filing of a plan of reorganization for the Debtor that does not provide for the payment in cash in full of the DIP Loan Obligations;

(d) entry of an order to recover from any portion of the Collateral any costs or expenses of preserving or disposing of such Collateral under Bankruptcy Code section 506(c);

(e) the occurrence of a Material Adverse Effect as that term is defined in the DIP Loan Agreement; or

(f) the commencement of litigation which, if successful, would have a material adverse impact on the Debtor's ability to repay the DIP Loan Obligations or which would challenge in any respect the DIP Loan Obligations or the DIP Liens.

16. Automatic Stay Vacated and Modified.

(a) Upon the occurrence of an Event of Default, (x) the automatic stay of Bankruptcy Code section 362 is hereby vacated and modified to the extent necessary to permit the DIP Lender to immediately (A) deliver a notice of an Event of Default, and (B) terminate or suspend any outstanding advances or use thereof, and (y) after five (5) business days' written notice from the DIP Lender of an Event of Default (within which period the Debtor may only dispute the DIP Lender's declaration of an Event of Default on the basis of the events described in paragraph 15(b) or 15(e) above in the Bankruptcy Court on an expedited basis), the automatic stay shall terminate, without further order of the Court and without the need for filing any motion for relief from the automatic stay or any other pleading, for the limited purpose of permitting the DIP Lender to do any one or more of the following: (A) charge the default rate of interest on the DIP Loan Obligations, and (B) declare the principal of and accrued interest, fees and expenses constituting the DIP Loan Obligations to be due and payable. Upon and after the occurrence of an Event of Default, except as provided in the preceding sentence, the DIP Lender shall be required to file a motion seeking relief from the automatic stay (a "Stay Motion") to enforce any of its other rights or remedies, which motion shall be heard on no more than five (5) days' notice and the only issue to be adjudicated on the Stay

1 Motion shall be whether an Event of Default occurred under the DIP Loan Documents.

2 The Debtor is deemed to waive any right under Bankruptcy Code section 105 to enjoin
3 the exercise of the rights and remedies by the DIP Lender following an Event of Default.

4 (b) The rights and remedies of the DIP Lender specified herein are
5 cumulative and not exclusive of any rights or remedies that the DIP Lender may have
6 under the DIP Loan Documents or otherwise. The Debtor shall cooperate fully with the
7 DIP Lender in its exercise of rights and remedies, whether against the Collateral or
8 otherwise.

9 (c) This Court shall retain exclusive jurisdiction to hear and resolve any
10 disputes and enter any orders required by the provisions of this Interim Order and relating
11 to the application, re-imposition or continuance of the automatic stay of Bankruptcy
12 Code section 362(a) or other injunctive relief requested.

13 17. Loan Advances, Budget and Reporting.

14 (a) Proceeds from the DIP Loan shall be used exclusively for funding
15 the expenses (collectively, the “Approved Expenses”) which are set forth in the
16 Approved Budget. The Debtor may make expenditures in excess of the amounts set forth
17 in the Approved Budget so long as the total variance does not exceed, on a line-item
18 basis, 10 percent of the total budgeted expenses (exclusive of legal or professional fees
19 and expenses) through the end of the applicable period, and shall be permitted to carry
20 forward from a prior four-week period to the next two succeeding four-week periods any
21 unused portion of the aggregated actual amounts attributable to the prior four-week
22 period. For the avoidance of doubt, no portion of the DIP Loan, the Collateral securing
23 the DIP Loan, the proceeds of the DIP Loan or the Carve-Out may be used in connection
24 with discovery proceedings, initiation or prosecution of any claims, causes of action,
25 objection or other litigation against the DIP Lender or with respect to the DIP Loan
26 Obligations.

(b) On each Friday of every week, beginning June 24, 2011, the Debtor shall deliver: (i) a variance report detailing (x) the cash expenditures for the prior week and a comparison to the Approved Budget for that week, (y) the cumulative cash expenditures for all of the prior weeks since the Conversion Date and as compared to the Approved Budget for such weeks, and (z) a narrative explanation of the variances between the actual weekly expenditures and the budgeted weekly expenditures; and (ii) an updated weekly cash flow forecast for the then remaining period of the Approved Budget (the “Updated Budget”), consistent with the Approved Budget (collectively, the “Weekly Reports”). The Weekly Reports shall be in form and substance satisfactory to the DIP Lender. Subject to the approval of the DIP Lender, which shall not be unreasonably withheld and which shall not require any further Bankruptcy Court approval, the Updated Budget shall be deemed the Approved Budget. Compliance with the Approved Budget shall be measured on a weekly basis.

(c) The Debtor shall additionally provide to the DIP Lender the following reports and information:

(i) monthly financial statements, operating reports, and budget and operating plans for each such monthly period (the “Monthly Reports”); and

(ii) on an as-requested basis all such other reports and information respecting the Debtor’ business, financial condition or prospects as the DIP Lender from time to time reasonably requests.

(d) The delivery of the Weekly Reports and the Monthly Reports shall be accompanied by a certification from the Debtor that such Weekly Reports and Monthly Reports are true and correct in all material respects.

18. Access. The DIP Lender and its respective agents and advisors shall have full access, upon reasonable notice during normal business hours, to the Debtor’ business records, business premises, and to the Collateral to enable the DIP Lender or its agents

1 and advisors to (a) review, appraise, and evaluate the physical condition of the Collateral,
 2 (b) inspect and review the financial records and all other records of the Debtor
 3 concerning the operation of the Debtor's business and the Collateral, and (c) evaluate the
 4 Debtor's overall financial condition and all other records relating to the operations of the
 5 Debtor and the Collateral. The Debtor shall fully cooperate with the DIP Lender
 6 regarding such reviews, evaluations, and inspections, and shall make their employees and
 7 professionals available to the DIP Lender and its professionals and consultants to conduct
 8 such reviews, evaluations, and inspections.

9 19. Insurance Policies. Upon entry of this Interim Order, the DIP Lender shall
 10 be, and shall be deemed to be, without any further action or notice, named as additional
 11 insureds and loss payees, as applicable, on each insurance policy maintained by the
 12 Debtor which in any way relates to the Collateral. The Debtor is authorized and directed
 13 to take any actions necessary to have the DIP Lender be added as an additional insured
 14 and loss payee on each insurance policy.

15 20. Indemnification. The Debtor shall indemnify and hold harmless the DIP
 16 Lender, its affiliates and each of the respective officers, directors, members, partners,
 17 employees, agents, advisors, attorneys and representatives of each (each, an "Indemnified
 18 Party") from and against any and all claims, damages, losses, liabilities and expenses
 19 (including, without limitation, reasonable fees and disbursements of counsel), joint or
 20 several, that may be incurred by or asserted or awarded against any Indemnified Party
 21 (including, without limitation, in connection with or relating to any investigation,
 22 litigation or proceeding or the preparation of any defense in connection therewith), in
 23 each case arising out of or in connection with or by reason of the DIP Loan, the Interim
 24 Order, the Final Order, or any of the transactions contemplated thereby, or any actual or
 25 proposed use of the proceeds of the DIP Loan, except to the extent such claim, damage,
 26 loss, liability or expense is found in a final judgment by a court of competent jurisdiction

1 to have resulted from such Indemnified Party's gross negligence or willful misconduct.
 2 In the case of an investigation, litigation or other proceedings to which the indemnity in
 3 this paragraph applies, such indemnity shall be effective whether or not such
 4 investigation, litigation or proceeding is brought by the Debtor, any of its managers,
 5 equity owners or creditors, an Indemnified Party or any other person, or an Indemnified
 6 Party is otherwise a party thereto and whether or not the transactions contemplated by the
 7 DIP Loan Documents are consummated. The Debtor further agrees that no Indemnified
 8 Party shall have any liability (whether direct or indirect, in contract, tort, or otherwise) to
 9 the Debtor or any of its equity owners or creditors for or in connection with the
 10 transactions contemplated by the DIP Loan Documents, except for direct damages (as
 11 opposed to special, indirect, consequential or punitive damages (including, without
 12 limitation, any loss of profits, business or anticipated savings)) determined in a final
 13 judgment by a court of competent jurisdiction to have resulted from such Indemnified
 14 Party's gross negligence or willful misconduct.

15 21. Successors and Assigns. The DIP Loan Documents and the provisions of
 16 this Interim Order shall be binding upon the Debtor, the DIP Lender, the Existing
 17 Secured Creditors, and each of their respective successors and assigns, and shall inure to
 18 the benefit of the Debtor, the DIP Lender, the Existing Secured Creditors and each of
 19 their respective successors and assigns, including, without limitation, any trustee,
 20 responsible officer, estate administrator or representative, or similar person appointed in a
 21 case for the Debtor under any chapter of the Bankruptcy Code. Upon entry of the Final
 22 Order, the provisions of the DIP Loan Documents, the Interim Order and the Final Order
 23 shall also be binding on all of the Debtor's creditors, equity owners, and all other parties
 24 in interest.

25 22. Binding Nature of Agreement. Each of the DIP Loan Documents to which
 26 the Debtor is or will become a party shall constitute legal, valid, and binding obligations

1 of the Debtor, enforceable in accordance with their terms. The DIP Loan Documents
 2 have been or will be properly executed and delivered to the DIP Lender by the Debtor as
 3 soon as is practicable after entry of this Interim Order. The rights, remedies, powers,
 4 privileges, liens, and priorities of the DIP Lender provided for in this Interim Order and
 5 in the DIP Loan Documents shall not be modified, altered or impaired in any manner by
 6 any subsequent order (including a confirmation order), by any plan in this Chapter 11
 7 case, or by the dismissal or conversion of this Chapter 11 case or any superseding
 8 Chapter 7 case unless and until the DIP Loan Obligations have first been indefeasibly
 9 paid in full in cash and completely satisfied and the commitments terminated in
 10 accordance with the DIP Loan Documents.

11 23. Subsequent Reversal or Modification. This Interim Order is entered
 12 pursuant to Bankruptcy Code section 364, and Bankruptcy Rule 4001(c), granting the
 13 DIP Lender all protections afforded by Bankruptcy Code section 364(e). If any or all of
 14 the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed,
 15 that action will not affect (i) the validity of any obligation, indebtedness or liability
 16 incurred hereunder by the Debtor to the DIP Lender, prior to the date of receipt by the
 17 DIP Lender of written notice of the effective date of such action, or (ii) the validity and
 18 enforceability of any lien or priority authorized or created under this Interim Order or
 19 pursuant to the DIP Loan Documents. Notwithstanding any such reversal, stay,
 20 modification or vacatur, any postpetition indebtedness, obligation or liability incurred by
 21 the Debtor to the DIP Lender prior to written notice to the DIP Lender of the effective
 22 date of such action shall be governed in all respects by the original provisions of this
 23 Interim Order, and the DIP Lender shall be entitled to all the rights, remedies, privileges,
 24 and benefits granted herein and in the DIP Loan Documents with respect to all such
 25 indebtedness, obligations or liability.

26 24. Restriction on Use of DIP Lender's Funds. The Superpriority Claim, the

DIP Liens and the Adequate Protection Liens shall be valid and binding liens and claims, enforceable in accordance with the provisions hereof, and no proceeds from the DIP Loan, Collateral or proceeds thereof, or any portion of the Carve-Out may be used to pay any claims for services rendered by any of the professionals retained by the Debtor (or any successor trustee or other estate representative in this Chapter 11 case or in any superseding Chapter 7 case), any creditor or party in interest, any Committee or any other party to (a) request authorization to obtain postpetition loans or other financial accommodations pursuant to Bankruptcy Code section 364(c) or (d), or otherwise, other than from the DIP Lender; and/or (b) investigate, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, the DIP Lender or any of its respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, or action, including, without limitation, (i) any so-called "lender liability" claims and causes of action; (ii) any action with respect to the validity and extent of the DIP Loan Obligations or the validity, extent, and priority of the DIP Liens; (iii) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the DIP Liens; and/or (iv) any action that has the effect of preventing, hindering or delaying (whether directly or indirectly) the DIP Lender's assertion, enforcement or realization on the Collateral in accordance with the DIP Loan Documents or this Interim Order.

25. Priming and Subordination of Liens. For avoidance of doubt, and notwithstanding anything to the contrary herein, all liens on the Collateral in existence on the date hereof (except the Non-Primed Liens) shall be primed by the DIP Liens and the Adequate Protection Liens and shall be subordinate to the DIP Liens and the Adequate Protection Liens.

1 26. No Waiver. This Interim Order shall not be construed in any way as a
2 waiver or relinquishment of any rights that the DIP Lender may have to bring or be heard
3 on any matter brought before this Court.

4 27. No Waiver by Failure to Seek Relief. The failure of the DIP Lender to seek
5 relief or otherwise exercise their rights and remedies under this Interim Order, the DIP
6 Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of
7 any of the rights thereunder, or otherwise of the DIP Lender.

8 28. Limits on DIP Lender's Liability. Nothing in this Interim Order or in any
9 of the DIP Loan Documents or any other documents related to this transaction shall in
10 any way be construed or interpreted to impose or allow the imposition upon the DIP
11 Lender of any liability for any claims arising from any and all activities by the Debtor in
12 the operation of its business or in connection with its restructuring efforts.

13 29. Priority of Terms. To the extent of any conflict between or among (a) the
14 express terms or provisions of any of the DIP Loan Documents, the Motion, any other
15 order of this Court, or any other agreements, on the one hand, and (b) the terms and
16 provisions of this Interim Order, on the other hand, unless such term or provision herein
17 is phrased in terms of "as defined in" or "as more fully described in" the DIP Loan
18 Documents, the terms and provisions of this Interim Order shall govern.

19 30. No Third Party Beneficiary. Except as expressly set forth herein, no rights
20 are created hereunder for the benefit of any third party, any creditor or any direct, indirect
21 or incidental beneficiary.

22 31. Survival. Except as otherwise provided herein, (a) the protections afforded
23 to the DIP Lender and the Existing Secured Creditors under this Interim Order, and any
24 actions taken pursuant thereto, shall survive the entry of an order (i) dismissing this
25 Chapter 11 case, or (ii) converting this Chapter 11 case to a case under Chapter 7, and
26 (b) the DIP Liens, the Adequate Protection Liens, the Superpriority Claim, and the

Adequate Protection Claims shall continue in this Chapter 11 case, in any superseding Chapter 7 case or after any such dismissal. Except as otherwise provided herein, the DIP Liens and the Adequate Protection Liens shall maintain their priorities as provided in this Interim Order and in the Final Order, and shall not be modified, altered or impaired in any way by any other financing, extension of credit, incurrence of indebtedness (except with respect to any additional financing to be provided by the DIP Lender in accordance with the Final Order), or any conversion of this Chapter 11 case to a case under Chapter 7 or dismissal of the Chapter 11 case, or by any other act or omission until all DIP Loan Obligations are indefeasibly paid in full in cash and completely satisfied, and the commitments under the DIP Loan Documents are terminated in accordance therewith.

32. Final Hearing Date. The Final Hearing shall be held in Courtroom #6 on _____, 2011, commencing at _____.m., at the Wayne L. Morse Courthouse, 405 E. 8th Avenue, Eugene, OR.

33. Proof of Claim. The DIP Lender is hereby relieved of the requirement to file a proof of claim with respect to any DIP Loan Obligations and any other claims or liens granted hereunder or created hereby.

34. Entry of Interim Order; Effect. This Interim Order shall take effect immediately upon execution hereof, notwithstanding the possible application of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise.

35. Retention of Jurisdiction. This Court shall retain jurisdiction over all matters pertaining to the implementation, interpretation and enforcement of this Interim Order and/or the DIP Loan Documents.

36. Binding Effect of Interim Order. The terms of this Interim Order shall be binding on any trustee appointed under Chapter 7 or Chapter 11 in this case.

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Presented by:

/s/ David A. Foraker
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Attorneys for Debtor

cc: List of Interested Parties

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Debtor's Motion for Authorization to Obtain Secured Credit on Interim and Final Basis was served on all parties requesting notice through the ECF System by electronic notice and on the parties listed on the attached List of Interested Parties by the methods indicated therein. Unless another method of service is indicated, service was made by placing a copy thereof in a sealed, first-class, postage prepaid envelope, addressed to each party's last known address and depositing the same into the United States mail at Portland, Oregon on the date set forth below.

Dated: June 7, 2011.

/s/ David A Foraker
David A. Foraker, OSB #812280
Attorney for Debtor

\\7095\P COS P Motion Auth Interim Credit.wpd

List of Interested Parties

(Olsen Agricultural Enterprises LLC)

Secured Creditors (Special List):

BFS International, LLC (Via First Class Mail)
c/o David E. Grein, Esq.
Registered Agent
1030 SW Morrison St.
Portland, OR 97205

Tim Miller (Via First Class Mail and E-mail: tim@beaverfreight.com)
BFS International, LLC
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Department of Justice
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US Attorney for the District of Oregon (Via First Class Mail)
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Portland, OR 97204

Susan Anderson, Specialist (Via First Class Mail and Facsimile (541) 302-0971)
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c/o CT Corporation System
Registered Agent
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Salem, OR 97301-3581

(Via First Class Mail)

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(Via First Class Mail)

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20 Largest Unsecured Creditors (Via First Class Mail):

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